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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUO YING CHEN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-74343

Agency No. A79-630-182

MEMORANDUM^{*}

GUO YING CHEN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71604

Agency No. A79-630-182

On Petition for Review of an Order of the
Board of Immigration Appeals

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted November 18, 2005**
San Francisco, California

Before: NOONAN, RYMER, and GOULD, Circuit Judges.

Petitioner Guo Ying Chen, a native and citizen of China, petitions for review of two decisions of the Board of Immigration Appeals (BIA) denying her application for asylum and her subsequent motion to reopen that application. We review the BIA's denial of an applicant's motion to reopen for an abuse of discretion. *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004). We have held that the BIA abuses its discretion if it fails to consider new, material evidence offered by an applicant in support of a motion to reopen. *See, e.g., Mejia v. Ashcroft*, 298 F.3d 873, 879-80. (9th Cir. 2002).

Chen's asylum claim alleged that she was persecuted by the Chinese government because she was required to have an IUD implanted after giving birth to a child out of wedlock, in violation of China's family planning policies. After her asylum application was denied by the IJ and the BIA, Chen moved to reopen. Chen presented evidence that, after the denial of her initial application, she began to experience worsening medical symptoms, including dizziness, severe abdominal pain, and loss of consciousness, that were linked to her IUD. She provided a

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

doctor's note stating that her IUD had been removed for medical reasons. And she alleged that she feared a second IUD insertion and "additional penalties" if she were returned to China. The BIA denied Chen's motion to reopen.

On appeal, Chen argues that the BIA abused its discretion in denying her motion to reopen because it gave no consideration to her newly-presented evidence. We agree. Aside from noting a "threat of infection," the BIA did not even acknowledge the new medical symptoms Chen had suffered as a result of her IUD. Yet this evidence bears directly on the degree of physical pain that Chen experienced as a result of her IUD, a crucial component in assessing whether Chen has suffered, or fears, persecution. Moreover, although Chen expressly stated that she feared a *second* IUD insertion, the BIA's opinion relies only on the circumstances surrounding Chen's *first* IUD insertion, in 1992. We do not find it realistic for the BIA to assume, without explanation, that Chen would submit to a second IUD insertion as easily as she did eleven years earlier, particularly in light of the severe physical distress Chen ultimately suffered as a result of her first IUD. In addition, the BIA completely failed to address Chen's contention that she feared "additional penalties," in addition to a second IUD insertion, as punishment for her having removed her IUD without permission. Finally, the BIA did not consider

whether Chen's decision to remove her IUD constitutes the "resistance to a coercive population control program" required by 8 U.S.C. § 1101(a)(42).

On this record, we are convinced that the BIA abused its discretion by failing to meaningfully address the new, material evidence presented by Chen in support of her motion to reopen. In light of this decision, it is unnecessary at this time for us to address the question of whether the BIA properly denied Chen's initial asylum application.

We therefore VACATE the decision of the BIA denying Chen's motion to reopen and REMAND for a full consideration of the evidence proffered by Chen. Chen's appeal in 03-74343 shall be held in abeyance pending further proceedings before the BIA.